

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO THE COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VA 22202-3513 ON THE DATE INDICATED BELOW

By: Donna Calvin
DATE: 7/17/03

BOX TTAB - FEE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BIOGEN, INC.

Opposer,

v.

VIAGEN, INC.

Applicant.

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Opposition No.



07-21-2003

U.S. Patent & TMOfr/TM Mail Rcpt Dt. #22

NOTICE OF OPPOSITION

Honorable Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Dear Commissioner:

In the matter of trademark Application Serial No. 78/152,650 for the mark
“VIAGEN” filed August 8, 2002 and published for opposition in the *Official Gazette* of May 20,
2003.

Biogen, Inc. a Massachusetts corporation having an address of 14 Cambridge
Center, Cambridge, MA 02142 (“Biogen”), believes that it will be damaged by the registration
of the mark shown in the above-identified application for the goods identified therein and hereby
opposes the same. The grounds for opposition are as follows:

1. Viagen, Inc. (hereinafter “Applicant”) seeks to register “VIAGEN” as a
trademark for research and development in the fields of genetics and biotechnology to the order

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Attorney Docket 080615

and specification of others; genetic testing, diagnostics and research in connection with the selection, management and genetic branding of animals.

2. The application herein opposed was filed August 9, 2002 on the basis of "intent to use".

3. Biogen is and has been engaged in research and development of pharmaceutical preparations for more than twenty years, and has built a successful business in connection therewith.

4. Biogen has used "BIOGEN" as a name and mark in commerce in connection with its business, its pharmaceutical preparations and its research and related services for more than twenty years. Material showing Biogen's use of "BIOGEN" as a name and mark is attached as Exhibit A.

5. For more than twenty years, Biogen's use of the BIOGEN name and mark in connection with pharmaceutical preparations and research and related services has been continuous, commercially significant and substantially exclusive.

6. Biogen has, since long prior to the filing date of the intent to use application herein opposed, used BIOGEN as a name and as a mark in connection with its business, its pharmaceutical preparations and its research and related services.

7. Biogen's "BIOGEN" name and mark are inherently distinctive as applied to Biogen's business, pharmaceutical preparations, and research and related services.

8. By virtue of Biogen's continuous use in commerce of its BIOGEN name and mark in connection with such business, pharmaceutical preparations, and research and related services such business, pharmaceutical preparations and research and related services have become well and favorably known to the relevant trade and public under such name and mark.

9. The BIOGEN name and mark are and have been famous since any prior to the filing date of the application herein opposed.

10. Biogen is the owner of the following U.S. trademark registrations, inter alia, which registrations are valid and existing: 1, 275,543; 1,314,274; 1,343,559; 1,961,898; 2,242,940. A copy of the printout of information about each of these registrations is attached as Exhibit B.

11. Granted Biogen's federal trademark registrations for "BIOGEN", priority is not in issue.

12. In the application herein opposed, there are no restrictions on trade channels, so it must be assumed that the services identified in the application will be promoted and rendered through all trade channels to all customers appropriate for services of that type.

13. Applicant's mark is essentially identical to Biogen's "BIOGEN" name and mark in sound and overall commercial impression.

14. The business, pharmaceutical preparations and research and related services of Biogen and the services of Applicant as identified in the application herein opposed are closely related.

15. Applicant seeks registration of the mark which is the subject of this opposition for, inter alia, research and development in the fields of biotechnology and the order and specification of others. Biogen is engaged in research and development in the field of biotechnology and has participated with various entities in connection with research and development and distribution of pharmaceutical preparations for a wide range of indications. The close relationship in the goods and services is evident and strong.

16. The research services identified in the application herein opposed are customarily marketed and rendered through the same channels of trade as Biogen employs.

Applicant's services are such as would accordingly travel through the same and overlapping channels of trade as Biogen's.

17. The research services to be rendered under the Applicant's mark are such as would be offered and rendered to overlapping classes of customers as Biogen's services.

18. The Applicant's "VIAGEN" trademark as applied to the services set forth in the application herein opposed so resembles Biogen's "BIOGEN" name and mark as used that it is likely to cause confusion, mistake, and/or deception.

19. If the Applicant is permitted to register "VIAGEN" for the services set forth in the application herein opposed, confusion of the relevant trade and public is likely to result, which is likely to damage and injure Biogen.

20. Purchasers or potential purchasers of the Applicant's services would likely believe in error that such services are offered by or in association with Biogen, or that Biogen has participated in the services or that Biogen and the Applicant are affiliated.

21. Any defect, objection to or fault found with the Applicant's services rendered under the "VIAGEN" mark would necessarily reflect on and seriously injure the reputation that Biogen has established for its business, its pharmaceutical preparations, and its research and related services.

22. If the Applicant is granted a registration for the mark herein opposed, it would obtain thereby at least a *prima facie* exclusive right to use the mark. Such registration would be a source of damage and injury to Biogen.

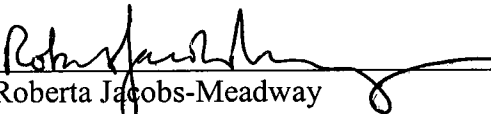
WHEREFORE, Biogen prays that registration of the mark of Application Serial No. 78/152,650 for the services identified therein be refused and that this Opposition be sustained.

A duplicate copy of this Notice of Opposition is enclosed herewith.

The \$300.00 filing fee for this Opposition may be charged to Deposit Account No. 02-0755. Any additional fees in connection with this opposition may also be charged to this account and any overpayment may be credited to this account.

Respectfully submitted,

Dated: July 17, 2003

By: 
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Richard Pierce
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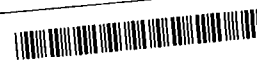
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U.S. Patent & TMOfr/TM Mail Rcpt Dt. #22

July 17, 2003

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

Dear Sir:

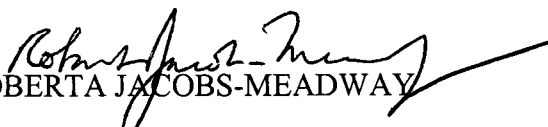
We are enclosing herewith the following documents set forth below, which are to be filed in the Patent and Trademark Office.

Please charge all government filing fees with respect to the enclosed documents to our Miscellaneous Deposit Account 02-0755.

Please charge any additional fees or credit overpayment to Miscellaneous Deposit Account 02-0755.

Respectfully submitted,

BALLARD SPAHR ANDREWS & INGERSOLL, LLP


ROBERTA JACOBS-MEADWAY

Enclosures: Notice of Opposition
Application of: Biogen, Inc. v. Viagen, Inc.
Fee: \$300.00
Serial No.: 78/152,650
Mark: VIAGEN
Attorney Docket No.: 080615
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